

activities and sources listed in § 218.120(c) should the amounts (*i.e.*, hours, dips, number of exercises) vary from those estimated in § 218.120(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.122(c).

§ 218.121 Effective dates.

Amended regulations in this subpart are effective February 1, 2012, through May 4, 2016.

[77 FR 4925, Feb. 1, 2012]

§ 218.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.127 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.120(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.120(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.120(c) is limited to the species listed below in paragraphs (c)(4) and (5) of this section by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraphs (c)(4) and (5) of this section, for that species by more than 25 percent (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (c)(4) and (5) of this section, by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) of this section by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—6,975 (an average of 1,395 annually);

(B) Fin whale (*Balaenoptera physalus*)—55,185 (an average of 11,037 annually);

(C) Blue whale (*Balaenoptera musculus*)—10 (an average of 2 annually);

(D) Sei whale (*Balaenoptera borealis*)—40 (an average of 8 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—3,405 (an average of 681 annually);

(F) Gray whale (*Eschrichtius robustus*)—1,940 (an average of 388 annually); and

(G) North Pacific right whale (*Eubalaena japonica*)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—1,645 (an average of 329 annually);

(B) Killer whale (*Orcinus orca*)—53,245 (an average of 10,649 annually);

(C) Harbor porpoise (*Phocoena phocoena*)—27,200 (an average of 5,440 annually);

(D) Baird's beaked whales (*Berardius bairdii*)—2,435 (an average of 487 annually);

(E) Cuvier's beaked whales (*Ziphius cavirostris*)—11,560 (an average of 2,312 annually);

(F) Stejneger's beaked whales (*Mesoplodon stejnegeri*)—11,565 (an average of 2,313 annually);

(G) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—84,955 (an average of 16,991 annually); and

(H) Dall's porpoise (*Phocoenoides dalli*)—1,031,870 (an average of 206,374 annually).

(iii) Pinnipeds:

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(A) Steller sea lion (*Eumetopias jubatus*)—55,540 (an average of 11,108 annually);

(B) California sea lion (*Zalophus californianus*)—10 (an average of 2 annually);

(C) Harbor seal (*Phoca vitulina richardsi*)—10 (an average of 2 annually);

(D) Northern elephant seal (*Mirounga angustirostris*)—10,345 (an average of 2,069 annually); and

(E) Northern fur seal (*Callorhinus ursinus*)—771,010 (an average of 154,202 annually).

(5) Level A Harassment and/or mortality of no more than 15 beaked whales (total), of any of the species listed in § 218.122(c)(1)(ii)(D) through (F) over the course of the 5-year regulations.

§ 218.123 Prohibitions.

No person in connection with the activities described in § 218.120 may:

(a) Take any marine mammal not specified in § 218.122(c);

(b) Take any marine mammal specified in § 218.122(c) other than by incidental take as specified in §§ 218.122(c)(1), (c)(2), and (c)(3);

(c) Take a marine mammal specified in § 218.122(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 218.127 of this chapter.

§ 218.124 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.120(c), the mitigation measures contained in a Letter of Authorization issued under §§ 216.106 and 218.127 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Personnel Training (for all Training Types):

(i) All commanding officers (COs), executive officers (XOs), Lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-Submarine Warfare (ASW) helicopter crews shall complete

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the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge Lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(ii) Navy Lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968-D).

(iii) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced Lookout. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as Lookouts can be counted among required Lookouts as long as supervisors monitor their progress and performance.

(iv) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.

(v) All Lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(vi) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.

(2) General Operating Procedures (for all Training Types):

(i) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species protective measures.

(ii) COs shall make use of marine species detection cues and information to